

DATE: July 15, 2008
FROM: Tim Schmitt, LimnoTech, and
Jennifer Peyser, RESOLVE

Memorandum

TO: Participants at MDE July 9, 2008 General Permit Public Meeting

CC:

SUBJECT: Next steps associated with the General Permit discussion

Thank you for your participation at the July 9th meeting! This memo provides a brief summary of each of these discussions and next steps for meeting participants, subgroups participants, and MDE.

The objectives of the July 9th meeting included the following:

- To discuss draft proposals developed by MDE in response to the discussions of each of the subgroups and finalize these draft proposals for action by MDE
- To identify next steps

Please see Attachment A for the meeting agenda.

PLEASE NOTE: Any stakeholders who were not present at the meeting and plan to participate in future discussions are encouraged to contact MDE with any questions or concerns about the proposals discussed at the July 9 meeting. It is preferable to raise questions or concerns at or before the upcoming subgroup meetings rather than waiting until the August 13 or subsequent monthly public meetings, so subgroups can consider and work to address these issues.

MDE's Draft Subgroup Proposals for Stakeholder Discussion

Representatives from each of the three subgroups summarized their most recent meetings and the straw man proposals (drafted by MDE) that resulted from those subgroup meetings.

Please see Attachment C for the Draft Subgroup Proposals for Stakeholder Discussion.

Subgroup A

Much of the July 9 meeting focused on discussion of the “straw man” proposal addressing Subgroup A’s Question 1, although the discussion also included many references to the issues covered under subgroup C (the General Permit language on erosion and sediment control and stormwater management requirements). Below is a summary of agreements and remaining questions.

The group agreed that the “hold period” between when an NOI is submitted and a decision by MDE on granting the GP should be 45 days for projects 3 acres or larger, and 30 days for

projects that disturb less than three acres. (The group also agreed that the key distinction between these two project categories was acreage and not land use.) There is still an issue of “when the clock starts” for the public comment period, because MDE is unsure how quickly they can post NOIs on their website after receiving them. MDE does not want to cause an undue delay for developers, but also wants to be sure the public has the full comment period. MDE will check on this and report back to the group.

The group also agreed that, for each NOI, it would be helpful for MDE to list the erosion and sediment (E&S) control plan number or other identifier so that the public can find the E&S plans for a specific project easily at the appropriate agency office. Many noted that sufficient identification information (e.g., location) is typically available on the E&S plans, but if the local approval authority assigns a number to the E&S plans, this will be available with the NOI.

The group discussed review of E&S plans and the agency responsible for addressing public comments, with many supporting plan review at the local/county level. MDE clarified that they would review public comments on the NOI to determine if these comments require modifications to the E&S plan, and then coordinate with the local/county regulatory authority to address these comments.

Subgroup A also felt that their other questions (6 and 10) were either addressed under existing MDE requirements, or would be addressed by MDE during its evaluation of the new Stormwater Management Act, and so no further discussion will be needed at this time.

MDE will take the agreement in principle reached on this proposal and draft permit language for review by the group and discussion at the August public meeting. (Because there was agreement in principle on Subgroup A’s questions, there will be no further Subgroup A meetings).

Subgroup B

Subgroup B members agreed that the current strawman proposal did not represent the most recent Subgroup discussions. However, the subgroup was close to resolution on a number of issues. First, the group agreed that a narrative standard for turbidity was more feasible than numeric criterion, and so the group agreed to work on a narrative criterion for turbidity. The group also discussed what would occur if a site violated this criterion. Violation of the criterion would trigger several actions, to be taken in a step-wise manner:

- Site review to ensure that all E&S controls are functioning properly.
- Site plan review to ensure adequacy.
- Amendment of the plan and possible requirement of additional or different BMPs.

Outstanding questions include who would conduct reviews of plans and sites and definitions or determinations of key terms such as “no visible discharge.” Some also pointed out that many of these ideas may already be required in existing regulations, so the group should explore which of these would constitute new requirements.

Participants noted that it was important for citizens to be able to monitor sites during times when crews are not on-site. There was agreement that contact information for site managers should be

posted for activists to contact if there were problems at a site; however, this information is typically posted already, so this is not a new requirement.

During the next Subgroup meeting, the group might also discuss what size of storm is exempt from the narrative criterion -- particularly because E&S controls are designed to control only certain-sized storms.

The next Subgroup meeting will be held during the week of July 21.

Subgroup C

During the Subgroup A discussions, the group explored individual permits, and characteristics that could serve as a “trigger” for consideration of an individual permit requirement, such as acreage disturbed at one time, proximity to streams, etc. Another outstanding question is how long MDE might need to determine the need for an individual permit after a public comment is received (or after the close of the comment period). This discussion will be continued in Subgroup C meetings and proposals.

Members of the Subgroup will refine the draft language, including potential individual permit triggers, and will clarify which of the nine points in the proposal are new requirements (and which are already required through various approval authorities). MDE will review drafts and discuss them with the local approval authorities to make sure that they can be implemented at the local level, and to see if there are certain minimum requirements common to all local jurisdictions.

The next Subgroup meeting will be held during the week of July 21.

Additional Information from MDE

MDE has provided the following additional information regarding the General Permit:

- MDE has been advised that the Waterkeepers in Maryland will no longer be participating in the public outreach meetings. The Waterkeepers do plan to review and comment on the draft permit when MDE issues it for public comment in the Fall.
- MDE has asked the Attorney General's Office to review several items raised as legal issues in relation to the General Permit.
- MDE wants to ensure that there is adequate time for public input and responses related to the new permit in order to meet the January 1, 2009 effective date target. To that end every effort will be made to prepare a draft permit by September 2008.
- MDE will also review the permit fee structure and will propose changes in the regulations needed to provide adequate resources to fulfill MDE's obligations related to the new permit.

Summary of Next Steps

The next public meeting will be held Wednesday, August 13, 9:30 a.m. to 12:30 p.m. at MDE.

MDE will develop draft permit language to address Question 1 based on the discussion at the public meeting. It will be available for the next meeting, along with a MS Word version of the updated GP.

Subgroup B will revise its strawman proposal for discussion at their next meeting (week of July 21) and the next public meeting. Their update will include:

- Creating a narrative standard for turbidity that would trigger certain actions as described previously in these minutes.
- Identification of sediment-impaired waters (include box to check on form).
- Discussion of whether buffers can be considered a BMP (currently, some counties allow them to be considered BMPs and some do not).

Subgroup C will revise its strawman proposal for discussion at their next meeting (week of July 21) and the next public meeting. Their update will include:

- Minimum standards for E&S and stormwater control for inclusion in the GP language
- Requirements that are already there versus those that are new
- Definition of site characteristics that could serve as triggers for consideration of an individual permit requirement.

Please contact Jesse Salter at MDE (JSalter@mde.state.md.us) if you have any questions or would like to get involved with the subgroup work.

ATTACHMENT A
Public Outreach Meeting – Renewal of the General Permit for Stormwater
Associated with Construction Activities

Proposed Agenda

Maryland Department of the Environment Offices
1800 Washington Blvd., Baltimore, MD
Aeris and Aqua Conference Rooms

July 9, 2008
9:30 a.m. – 12:30 p.m.

Meeting Objectives:

- To discuss draft proposal, building as much agreement as possible and identifying remaining questions to be addressed
- To identify and assign a lead for next steps on proposals

9:30-9:45 Welcome, Introductions, and Agenda Review
Jennifer Peyser, RESOLVE (meeting facilitator)

9:45-10:15 Subgroup Updates and Overview of Revised Draft Proposals
Dave Lyons and Jesse Salter, MDE, and Subgroup Members

- Get an overview from subgroup members and MDE on discussions since June meeting and three revised draft proposals

10:15-12:15 Subgroup Draft Proposal Discussion

- Discuss and get as much agreement as possible on subgroup proposals (beginning with Subgroup A, followed by B and C)
- Identify outstanding questions to address over the next month, as well as any additional next steps

12:20-12:30 Next Steps
Jennifer Peyser, RESOLVE

- Review and confirm next steps, including tentative subgroup meeting dates
- Next meeting date/time and proposed agenda (Wednesday, August 13, 9:30-12:30)

ATTACHMENT B
STRAWMAN PROPOSALS
JULY 11 CGP PUBLIC MEETING

Strawman Proposal #1 (Subgroup A) – revised July 3, 2008

MDE will adopt a requirement that NOIs must be submitted to MDE when E&S plans are submitted to the appropriate approval authority. The NOIs must provide certification of submission of an E&S plan and an identifying number assigned by the approval authority. If an NOI is submitted before the E&S plan is submitted to the approval authority, MDE will not accept it for processing and will send notice to the applicant that the NOI is incomplete and will not be processed until the required information is provided. Each week MDE will update information on the MDE Website to show all NOIs submitted during the previous week. The identifying number assigned to the related E&S plan will be included.

MDE will not act on the NOI for 45 days from the date of posting on the MDE Website. After 45 days have elapsed and following MDE's receipt of notification from the applicant demonstrating that the E&S plan for the project has been approved, MDE will, within 48 hours, issue notification that the site is covered under the general permit for stormwater associated with construction activities, with the following exception. If MDE receives within 45 days of posting on the MDE Website a request that the site be required to obtain an individual permit with a detailed explanation as to why the approved plans fail to meet State erosion and sediment control or stormwater management standards, MDE will evaluate the information, make a decision and send notification of that decision to the NOI applicant and the person requesting that an individual permit be required. Each week MDE will update information on the MDE Website to show all NOIs approved during the previous week.

If an NOI is submitted after the approval authority MDE has already approved an E&S plan, MDE will advertise the submission of the NOI, but will not act on the NOI for 45 days as indicated above. If no adverse comments are received during the 45 days then the NOI will be handled like all other NOIs.

For NOIs for construction sites for single-family homes that involve less than 3 acres but one acre or more of disturbed area, the holding period shall be 30 days after posting on MDE's Website instead of 45 days.

Proposal # 2 (Subgroup B) – revised July 3, 2008

The general permit will require that the applicant submitting an NOI must check to see if the State waters that receive any stormwater from their construction site are listed on the 303(d) list as impaired for sediment or nutrients (nitrogen or phosphorus) and on the application identify the waters that are impaired and what the impairment is for those waters. The permit will require that the permittee shall, prior to any earth disturbance on the site, develop a written strategy for conducting sampling and analysis, including the frequency of sampling, locations where sampling will be conducted, and the identity of trained personnel who will perform the sampling. Whenever a visual observation of a stormwater discharge from any control device on the site indicates that there is a possibility of excessive sediment being conveyed to State waters that are impaired for sediments or nutrients the permittee or their representative shall perform a turbidity test as soon as possible, but not later than two hours after the visual observation of the discharge of concern. No turbidity testing is required if the discharge is the result of a 24-hour 20-year storm event or greater.

Turbidity testing shall be performed in accordance with the Code of Federal Regulations (CFR), Title 40, Part 136, "Guidelines Establishing Test Procedures for Analysis of Pollutants."

The permittee shall within 24 hours report any sample results of 150 NTU or higher to the MDE, Water Management Administration, Compliance Program via telephone and within 5 days submit a written report documenting the sample results and the actions taken or planned to address turbidity in the stormwater discharge. The written strategy for conducting sampling and analysis and all sample results shall be maintained by the permittee during construction and for a period of three years after the site is fully stabilized and shall be made available to MDE upon request.

If the turbidity test reveals a level of 150 NTU or higher the turbidity testing will act as a trigger for a reevaluation of the E&S plan through discussion between the NOI holder and the E&S plan approval authority to determine if it is technically feasible to make changes/additions to controls and stabilization or to redirect the stormwater discharge that will reduce or eliminate the sediment discharge to waters impaired for sediment or nutrients in future storms. The E&S plan will be revised based on the reevaluation or the permittee will obtain a written statement from the approval authority stating that there are no technically feasible changes/additions to recommend that would reduce the sediment discharge in future storms.

Strawman Proposal # 3 (Subgroup C) – revised July 3, 2008

MDE will add the following section to the general permit:

E&S Control Plans and SWPPPs required under the general permit shall be prepared and reviewed to address these critical points of interest in addition to the basic elements included in those plans:

1. Utilization of Environmental Site Design in the early construction/development site design and continuation of ESD from first disturbance to post construction.
2. Indicate the limits of disturbance shown on plans are inclusive, consistent and prevent disturbance to streams, natural drainage features, stream buffers, soil conservation areas, wetlands, and forest conservation areas during construction
3. Control of construction equipment and vehicles so that they do not enter areas reserved for future stormwater infiltration or recharge.

4. Evaluation and appropriate limitation of site clearing needed to accommodate the building and transportation footprint at low-density sites so as to minimize impacts.
5. Evaluation and designation as to whether there is a minimum site area where construction phasing or sequencing must be used on specific sites.
6. Identification of soils at high risk for erosion and designation of advanced stabilization techniques, such as geotextile erosion control mats and blankets, mulch and turf reinforcement, for such soils on specific sites.
7. Identification of steep slopes and designation of limitations on clearing on the steep slopes on specific sites.
8. Evaluation and designation of stabilization requirements, such as hydroseeding, mulch, etc., including a time limit to initiate stabilization after soil has been exposed, on a site-by-site basis to minimize exposure of disturbed areas and visible dirt.
9. Evaluation and designation of an upper limit for upstream drainage area to drain to individual sediment basins or traps on each site to preclude direct discharge to streams as much as possible.